

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 706 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJ.

Versus

AMBALAL MULJIBHAI PATEL

Appearance:

Mr. S.P. Dave, APP for appellant.

MR IM PANDYA for Respondent No. 1, 2, 3, 4, 5, 6, 7, 8, 9

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 30/09/98

ORAL JUDGEMENT

The respondents were placed on trial in connection with the offences punishable under Section 3, 9, 10 of the Gujarat Educational Institution Regulation Act, 1984, in the Court of the Judicial Magistrate (F.C.), Lunawada. At the conclusion of the hearing they came to be acquitted on 1st June 1990. Against that acquittal order, the State has preferred this appeal.

2. Few facts may be stated. The respondents for the common good in their area wanted to run a PTC College in the name and style, "Shri Jagdamba Adhyapan Mandir". The

trust called "Radhakrishna Kelavani Mandal" was to run the college. The respondents were the trustees of Radhakrishna Kelavani Mandal. They got their trust registered in the office of the Joint Charity Commissioner, Nadiad on 6th June 1987, but without obtaining necessary permission from the Government they started the college on 26th June 1987. The college was inaugurated arranging the function which was presided over by Shri Purshottambhai Hirabhai Patel. As alleged, about 21 students filled-up the admission form. They were admitted and the tuition work was also commenced from July 1987. The Education Inspector on 20th July 1987 inspected the college and found that without taking the permission from the Government, the respondents had opened the college and were running the same admitting certain students. He also found that the respondents had thereby committed the offences punishable under Section 3, 9 & 10 of the Gujarat Educational Institution Regular Act, 1984. He therefore made a report to the District Education Officer who directed to lodge the complaint against the respondents. Pursuant to his direction, the FIR came to be lodged in Khanpur police station. At the conclusion of the investigation, in the Court of Judicial Magistrate (F.C.), Lunawada, a chargesheet was filed against the respondents who when the plea was taken pleaded not guilty and claimed to be tried. The chargesheet was registered as Criminal Case No. 1052/87. The prosecution then led necessary evidence. Appreciating the evidence before him, the learned Magistrate acquitted the respondents on 1st June 1990. It is against that order of acquittal, the present appeal is filed by the State.

3. Mr. S.P. Dave, the learned APP has contended so as to assail the legality and validity of the judgment that the learned Magistrate overlooking the evidence on record acquitted the respondents. The evidence on record is sufficient to convict them. The appreciation of the evidence made by the learned Magistrate is arbitrary, perverse and wholly in disregard of sound principles of law. In reply to such contention, Mr. Pandya, the learned advocate representing the respondents has supported the judgment and order rendered by the learned Magistrate. He took me through the entire evidence so as to point out the material infirmities and also to show how the learned Magistrate was right in appreciating the evidence and reaching the conclusion against the prosecution.

4. I have gone through the evidence on record, with meticulous care and finicky details. I am in general

agreement with the learned Judicial Magistrate, who has, appreciating the evidence, preferred to acquit the respondents. When I am in general agreement, it is not necessary to restate those reasonings assigned by the Judicial Magistrate. However, in short, I would be referring the evidence so as to point out how the learned Magistrate is right. Out of 21 students alleged to have filled-up the forms and taken admission, three students, namely Nathubhai (Ex.60), Jitendrabhai (Ex.61); Harshadbhai (Ex.70), and Laxmanbhai, the guardian of the student (Ex.71) are examined. They do not support the case of the prosecution submitting that they did not fill up the form for admission and no such institution had come into being for running the college. They were turned hostile. Their evidence, after they turned hostile, is also of no help to the prosecution as prosecution has failed to bring on record any helpful any material by further questioning.

5. The Panchnama was drawn so as to show that there was a Board of the college displayed on the gate, the college was found running and work of taking lectures in the class rooms was in progress. The panch Maganbhai Muljibhai, examined at Ex.23 also does not support such case of the prosecution. He is declared hostile and his evidence recorded thereafter also in no way supports the case of the prosecution. Another panch Somsinh Rathod examined at Ex.40, and one another panch Dolatsinh examined at Ex.42 were turned hostile as they did not support the case of the prosecution. According to them, the police called them as 'Kanesar' and took their signatures. Nothing further was done, or inquired into in their presence. Thus they also do not support the case of the prosecution.

6. Hariprasad Shankleshwar Bhatt (Ex.27) is the complainant. Admittedly he did not inquire into the matter and does not have the personal knowledge. He simply lodged the complaint because of the direction given to him vide Ex.28. His evidence is therefore of no help to the prosecution.

7. In view of such evidence on record, Mr. Dave, the learned APP emphasized much on the evidence of Mahendrakumar Chandulal Shah (Ex.31) who had inquired into the matter and reported the facts he noted during his inspection to his higher authority pursuant to which the complaint came to be lodged. Of course in the examination-in-chief he states that he had gone to the spot to inquire whether the college had started functioning; whether the students were attending the

class, whether lectures were being held; and whether necessary permission was taken, but in the cross-examination he had to admit that when he visited the place the educational activities were not going on and he could realise that the institution namely Jagdamba Adhyapan Mandir had not started any educational activity, and no one had even so stated before him. He could also see that no member of the staff was appointed and there was neither the teaching staff nor non-teaching member of the staff in the premises. He does not say that he saw the board of the college displayed at the gate and he could not take a note of any of the activities which ordinarily one would in normal course find in the college if the college is functioning. It appears, that the respondents applied for the permission so as to start the college and be helpful to the needy in the area but when the application was rejected on the basis of some illbased information, the enquiry was made and thereafter though Mahendrakumar Chandulal Shah found the institution throbbing with no activity, he for the reasons best known to him reported otherwise, as a result of which necessary direction to lodge the complaint was given. No other evidence is there on record. From whatever evidence referred to hereinabove is there on record, it cannot with certainty be said that the respondents have committed the offences as alleged. They have in short done no act which would constitute the offence alleged. The learned Magistrate is, therefore, perfectly right in appreciating the evidence and concluding that the prosecution has failed to establish the charge. The order of acquittal, under the circumstances, is required to be maintained as there is no reason to interfere with the same. Looking to the above discussed evidence, the appeal is required to be dismissed. In the result, the appeal, being devoid of merits is hereby dismissed.

8. The bonds executed, while executing the bailable warrant ordered by this Court, are hereby cancelled.

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(rmr).